

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

DAN L. VACEK, }
Plaintiff, }
v. } Civil Action No. 08-221 Erie
PENNSYLVANIA JUDICIAL CONDUCT }
BOARD, et al., }
Defendants. }

MEMORANDUM ORDER

This civil rights action was received by the Clerk of Court on August 6, 2008, March 28, 2008 and was referred to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The Magistrate Judge's Report and Recommendation [Doc. No. 108], filed on February 16, 2010, recommended that the motion to dismiss filed by Defendants City of Erie Traffic Court/City of Erie, Erie Police Department, John Doe #1/Erie Police Department, John Doe #2/Erie Police Department, John Doe #3/Erie Police Department, Lt. Liebel, Sgt. Talarico, and Sgt. Dahlstrand [Doc. No. 83] be granted. The Magistrate Judge further recommended that Count 12 of the Amended Complaint alleging the "Denial of Property Rights to Cause of Action in violation of 42 U.S.C. § 1982" against all named Defendants in both their individual and official capacities be dismissed for failure to state a claim. The parties were allowed ten (10) days from the date of service to file objections. No objections were filed. After de novo review of the complaint and documents in the case, the Court adopts the Report and Recommendation, but writes briefly to clarify two points.

I find, contrary to the Report and Recommendation, that the claims against the municipal police officers in their official capacities are not barred by the Eleventh Amendment. See Mt. Healthy City School Dist. Bd. of Education v. Doyle, 429 U.S. 274, 280 (1977). However, a dismissal of the action against these Defendants is independently supportable for the reasons set forth in the Report and

Recommendation. In addition, I find that dismissal is also appropriate on the basis of the running of the statute of limitations. See Wilson v. Garcia, 471 U.S. 261 (1985).

AND NOW, this 4th day of March, 2010;

IT IS HEREBY ORDERED that the motion to dismiss [Doc. No. 83] is GRANTED and Count 12 of the Amended Complaint is DISMISSED for failure to state a claim.

s/ Sean J. McLaughlin
United States District Judge

cm: All parties of record
Susan Paradise Baxter, U.S. Magistrate Judge